

TITLE 13. NEW MOTOR VEHICLE BOARD

(Notice published May 4, 2018)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California New Motor Vehicle Board ("Board"), pursuant to the authority vested in the Board by subdivision (a) of Vehicle Code section 3050 proposes to adopt the proposed regulation as described below, after considering all comments, objections, and recommendations regarding the proposed regulatory action.

PROPOSED REGULATORY ACTION

The Board proposes to amend section 551.12 of Title 13 of the California Code of Regulations pertaining to peremptory challenges.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on March 13, 2018. Twelve days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the March 13, 2018, General Meeting, and no further public discussion was held prior to publication of the notice.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323-1632 or by e-mail at dvare@nmvb.ca.gov or nmvb@nmvb.ca.gov. The written comment period closes at 5:00 p.m. on June 18, 2018. The Board will consider only comments received at the Board's offices by that time. Submit comments to:

Danielle R. Vare, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 327-3129 direct line
(916) 445-1888 main line
(916) 323-1632 fax
dvare@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050, subdivision (a), authorizes the Board to adopt the proposed regulation. The proposed regulation implements, interprets, and makes specific Vehicle Code sections 3066, 3080 and 3085.2 and Section 11425.40 of the Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The adopted mission of the Board is to: "...enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner. The adopted vision statement provides that the Board safeguard for its "constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves relations and reduces the need for costly litigation and develop methods that further improve the delivery of Board services in a timely and cost-effective manner..."

The Board proposes to amend Section 551.12 to eliminate the requirement of a declaration of prejudice by a party against an administrative law judge and to amend the language to be nearly identical to the Office of Administrative Hearings.

Section 551.12(b) clarifies that each party is entitled to one peremptory challenge of an administrative law judge assigned to preside over a merits hearing for a petition or protest as outlined in the subsections following.

Section 551.12(b)(1) is amended to clarify the peremptory challenge can be filed against an administrative law judge assigned for merits hearings.

Section 551.12(b)(2) is amended to provide language to be used substantially in the same form when filing a peremptory challenge.

Section 551.12(c) clarifies that the use of a peremptory challenge is only against an assigned administrative law judge for merits hearings.

Section 551.12(e) provides an unambiguous statement that peremptory challenges are not authorized for law and motion hearings, settlement conferences and rulings on discovery disputes. The proposed regulation deletes previous

language for a declaration declaring that the assigned administrative law judge is prejudiced against a party or interest of the party.

Section 551.12(f) further clarifies the regulation is in relation to assigned administrative law judges for merits hearings as well as deletes a provision regarding continuances.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The broad objective of the regulation is to clarify for litigants that appear before the Board the information necessary to effectively represent themselves or their clients.

The specific benefit anticipated from the regulation is promoting the expeditious and economical resolution of statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. It provides a uniformity of decisions across the state, allowing franchisors and their dealers to conduct their business in compliance with California law. The regulatory amendments also bring the Board in line with other state entities with similar regulations.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Further research was conducted to ensure that the proposed amendments are neither inconsistent nor incompatible with existing state regulations. The regulations of two other state agencies as well as the Office of Administrative Hearings were compared and it was confirmed the other entities permit challenges only to the Administrative Law Judge adjudicating the evidentiary hearing on the merits. It was determined that the proposed amendments are both reasonable and largely consistent with similar regulations of other state agencies by limiting peremptory challenges to the assigned hearing judge. Other agency regulations also do not require that a party include a supporting declaration that alleges judicial bias or other grounds for reassignment.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant, statewide adverse economic impact directly affecting businesses, including the ability of California business to compete with businesses in other states: None.
- Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes that the proposed regulations will not (1) create any jobs within the State of California, (2) eliminate any jobs within the State of California, (3) create any new businesses within the State of California, (4) eliminate any existing businesses within the State of California, or (5) cause the expansion of businesses currently doing business within the State of California.

BENEFITS OF THE REGULATION

The proposed regulation will promote the expeditious and economical resolution of disputes between new motor vehicle dealers and their manufacturers or distributors.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulation will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation. The proposed regulation merely clarifies case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest or petition with the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present comments, statements or arguments with respect to alternatives to the proposed regulation, during the written comment period or at the public hearing, if one is requested.

CONTACT PERSONS

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Vare at the following address:

Danielle R. Vare, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 327-3129 direct line
(916) 445-1888 main line
(916) 323-1632 fax
dvare@nmvb.ca.gov

The backup contact person for these inquiries is:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, the Economic and Fiscal Impact Statement, and all the information upon which the proposal is based. Copies may be obtained by contacting the contact persons identified above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the

modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the addresses indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion of the Final Statement of Reasons, copies thereof may be obtained by contacting Ms. Vare or Ms. Parker at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout font can be accessed through the Board's website at www.nmvb.ca.gov.